

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF WATER
AND WASTE MANAGEMENT

MEMORANDUM

SUBJECT: The Use of State Permitting Systems During
Phase I Interim Authorization Which are not
Based on Explicit Regulatory Standards.

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TO: PIGS Addressees

Issue:

Can a State program be considered substantially equivalent to the Federal Phase I hazardous waste program if the State controls hazardous waste management facilities through a permitting system which is not based on explicit regulatory standards?

Discussion:

This issue is not concerned with the authorization of States to issue/revoke RCRA permits, as is provided in §3005. Such authorization will not be available to States until the Phase II regulations are effective. During Phase I of interim authorization, Federal interim status standards or their State analogues apply to existing facilities. Some States with Phase I interim authorization may elect to apply their version of Federal interim status standards by issuing permits containing conditions analogous to the Federal interim status standards. This approach is perfectly acceptable. However, a permit containing those standards is not a RCRA permit and does not relieve the facility owner/operator holding it of the obligation to apply for and receive a RCRA permit after the effective date of Phase II.

In those States which deal with hazardous waste only through a permitting system, the Agency is concerned with the substance of the permit conditions. These permit conditions (along with compliance monitoring) will be the key elements which determine the success of a State program. The ideal situation exists when permit conditions are based on explicit regulatory standards which are substantially equivalent to the Federal interim status standards. This situation has the advantage of minimizing the potential for litigation by permittees who disagree with the permit conditions and provides a sound enforcement position. Some States, however, base their hazardous waste permit conditions on policy or guidance rather than on explicit standards established via regulation. Such a State program may require additional scrutiny by EPA prior to making a decision on whether to grant interim authorization.

Decision:

A State program may be issued interim authorization for Phase I even if it controls hazardous waste facilities through a permitting system which is not based on explicit regulatory standards. In determining whether the State's facility controls are substantially equivalent to the Federal program, the considerations discussed below must be examined.

The State's program description must delineate the conditions that will be used in all permits and must demonstrate that these conditions are substantially equivalent to the Federal interim status standards.

The state must have the legal authority to apply these permit conditions and to enforce compliance with the conditions. The State Attorney General must indicate in his or her statement (as part of the application) that such legal authority does exist.

Furthermore, the Memorandum of Agreement (MOA) must provide that all permit conditions delineated in the program description will be incorporated into all permits prior to the date of interim authorization. The MOA must state that permits will not be re-issued or modified unless as re-issued or modified they are substantially equivalent with the Federal interim status standards. The MOA must certify that the permits will be modified, if necessary, because of modifications in the Federal regulations, within one year of the date of promulgation of the new Federal regulation. In cases where a State statutory amendment or enactment is required to reflect changes in the Federal regulations, the MOA must provide that the permits will be modified within two years, as provided by 40 C.F.R. §123.13(e) (45 FR 33463). The MOA must also specify that all hazardous waste management activities without a permit are prohibited. Authority for such prohibition must be indicated in the Attorney General's Statement.